DOCUMENT RESUME

ED 241 366 SO 015 204

AUTHOR Cloyd, Frances L.; Faber, Charles F.
TITLE An Examination of the Constitutionality of Mandating Balanced Treatment of Evolution and Creationism in Public Schools.
PUB DATE [83]
NOTE 18p.
PUB TYPE Viewpoints (120) -- Legal/Legislative/Regulatory Materials (090)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Court Litigation; *Creationism; *Educational Legislation; Elementary Secondary Education; *Evolution; Freedom of Speech; *Public Schools; Religion; Religious Factors; Scientific Principles; State Church Separation; State Courts
IDENTIFIERS *First Amendment; Secular Humanism

ABSTRACT

Legislation, rulings, and arguments for and against public schools giving creationism equal time or consideration with evolution are discussed. In the 1920's fundamentalists began to promote statutes prohibiting the teaching of evolution in public schools. Since that time the creationists have sought to supplant evolution with creationism on the grounds that the teaching of evolution inhibits the free speech and religious practices of the believers of creationism. They have demanded that the study of evolution be reduced or eliminated because it is a religious theory and, in particular, a vital aspect of secular humanism, and, thereby, violates the first amendment. Nothing could be further from the truth. In fact, laws mandating the teaching of creationism violate constitutional rights. It is imperative for the sake of religious freedom in this country that the separation between church and state be maintained. As Supreme Court Justice William O. Douglas noted (Zorach v. Clausen, 343 U.S. 306, 314 1951), there are cases where the preferences of an individual or a majority cannot prevail. (RM)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED241366

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☐ This document has been reproduced as received from the person or organization originating it.

☑ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Charles F. Faber

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

An Examination of the Constitutionality of Mandating Balanced Treatment of Evolution and Creationism in Public Schools

by

Frances L. Cloyd
and
Charles F. Faber

SL 015 204

"Evolution is . . . not only anti-Biblical and anti-Christian, but it is utterly unscientific and impossible as well . . .; it has served effectively as the pseudo-scientific basis of atheism, agnosticism, socialism, fascism, and numerous other false and dangerous philosophies over the past century."[1]

The above quotation represents a view held by Fundamentalists since the 1920's when they began to promote statutes prohibiting the teaching of evolution in public schools. In recent years, the push has been to request balanced treatment for evolution-science and creation-science in public schools. The most significant example has been the actions of the Arkansas General Assembly which enacted the "Balanced Treatment for Creation-Science and Evolution-Science Act," signed into law by the Governor on March 19, 1981. On May 27, 1981, a suit was filed in the U.S. Court for the Eastern District of Arkansas challenging the law's constitutionality, and on January 5, 1982, Judge William R. Overton ruled that the law was, in fact, unconstitutional.

This paper will be an examination of the constitutionality of a law mandating creation-science. Included will be related legislation that has been proposed or enacted, arguments for and against, scholarly perspectives on the subject, and legislation that has been tested.

Beginning with a look at the history of this type of legislation, we shall review strategies, doctrines, and extent of interest. In the early 1960's, Southern California housewives lobbied to have the California State Board of Education dictate policy that would identify evolution as a theory or hypothesis instead of fact. Their activity became a

model for other individuals and groups to lobby state legislatures, state and local boards of education, and state textbook commissions. Their thrust was to secure laws or policies that creationism would receive equal time or consideration with evolution.[2] Subsequently 22 bills containing similar requirements in support of the creationist viewpoint were introduced in various state legislatures between 1964 and 1978. Between 1979 and 1981 these legislative efforts intensified as bills were introduced in at least 18 states.

Although the language of these proposed pieces of legislation varied, the intent was always the same. The first bills introduced required that the study of evolution be neutralized by giving equal consideration to the biblical account of the origin of life as recorded in Genesis. This account was interpreted literally and was dated using biblical chronologies. According to this view 6,000 years ago all forms of life, including humans, were formed as individually distinct and unchanging types. Around 2400 B.C., a large number of these organisms became extinct during the Noachian deluge and flood sent by God.

These early legislative attempts encountered a parallel opposition. For example, a 1973 Tennessee law requiring that alternative theories of creation be included in all textbooks discussing the origin or creation of humans and their world was declared unconstitutional by the U.S. Sixth Court of Appeals. This law mandated including the Genesis account among the various theories; however, it excluded occult or satanical beliefs concerning the origin of humans.[3] The court ruled that this legislation gave "a clearly defined preferential position for the biblical version of creation" and thus was unconstitutional as "the First Amendment does not permit the State to require that teaching and

and learning must be tailored to the principles or prohibition of any religious sect or dogma." (Daniel v. Waters, 515 F.2d. 485 (6th Cir., 1975).

This decision and others bolstered the opposition to the creationists. Even some creationists themselves acknowledged the unconstitutionality of legislation and local resolutions that required science textbooks and curriculums to include the Genesis account of creation. W.R. Bird, a leading attorney in the support for adding creationism to biology curriculum, conceded that the "presentation of biblical creation would contravene the establishment clause (of the Constitution) and thus could not be employed to neutralize a public school course."[4]

As a result of these constitutional entanglements, the creationists recognized a different approach would have to be followed. The use of scientific creationism, rather than biblical creationism would have to be employed to neutralize the study of evolutionary theory. However, creationism's opponents perceived the change in tactics.

Gerald Skoog submits, "Scientific creationism is biblical creationism without theological terminology."[5] The definition of scientific creationism is identical in creationist literature and in most of the recently introduced legislation. The following example is a definition from the Arkansas Balanced Treatment for Creation-Science and Evolution-Science Act, 1981:

> 1) Sudden creation of the universe, energy, and life from nothing; 2) The insufficiency of mutation and natural selection in bringing about development of all living kinds from a single organism; 3) Changes only within fixed limits of originally created kinds of plants and animals; 4) Separate ancestory for man and apes; 5) Exploration of the earth's geology by catastrophism, including the occurrence of world wide flood; and 6) A relatively recent inception of the earth and living kinds.[6]

Legislators passing the above legislation and others have argued scientific creationism must be included in the classroom on several grounds. The first argument for inclusion of creationism in the classroom is based on the concept that exlusive instruction in the general theory of evolution abridges the free exercise of religion for many students whose religious beliefs are contrary to the premise of evolution. A variation of this argument is the demand for reducing or eliminating the study of evolution because it is religious theory and, in particular, a vital aspect of secular humanism, and thereby violates the First Amendment. The intensity of these positions can be seen in the Arkansas law's emphatic declaration of purpose below:

> ...protecting academic freedom for students' differing values and beliefs; ensuring neutrality toward students' diverse religious convictions; ensuring freedom of religious exercise for students and their parents; guaranteeing freedom of belief and speech for students; preventing establishment of Theologically Liberal, Humanistic, Nontheist (Nonatheist), or Athiest religions; preventing discrimination against students on the basis of their personal beliefs concerning creation and evolution; and assisting students in their search for truth. This Legislature does not have the purpose of causing instruction in religious concepts or making an establishment of religion.[8]

This position and these arguments were utilized in Segraves v. State of California Board of Education, Sacramento Superior Court, #278978, when the Creation-Science Research Center (CSRC) sought to bar distribution of a curriculum guide that promoted emphasis on the evolutionary theory of the origin of life. The charge was that it essentially asserted it was the only credible theory of origin of life while scientific creationism is also a credible theory of life's origin. The CSRC considered creationism as a scientific theory compatible with members' religious beliefs and held that evolution was

incompatible. Consequently, CSRC members claimed that the State Board of Education was violating their religious freedom, that it was contributing to the establishment of the religion of secular humanism (and thereby violating the constitutional separation of church and state), and it was indoctrinating students into evolutionary dogma. The court's ruling on the case determined that the curriculum guideline did not discuss evolution dogmatically and so required no rewording. The court also ruled that the state must insure that evolution not be taught dogmatically as an undisputed fact, but rather only as a theory. This decision, in effect, indicated that alternative theoretical accounts are acceptable alternatives to evolutionary theory.

Harvey Siegel's examination of this case will be reviewed below because his findings illuminate and support the reaction to the Arkansas case. Siegel attacks the creationists' claims in this suit by examining whether evolution is a religion, dogma, or science; whether creationism is a science; and whether the State Board's actions were guilty of bias (in failing to maintain philosophical neutrality), indoctrination, and violating religious freedom. He notes that religion requires acceptance of some doctrine on faith and that the doctrine is immune to criticism and cannot be challenged by evidence. In contrast, science is nondogmatic, in that it is open to evidential support and falsification. In other words, scientific hypotheses are always open to future refutation in light of future evidence that may be produced. Consequently, the claim that the state is supporting a religion called secular humanism by teaching evolution is false. Obviously, secular humanism is not a religion. It does not have doctrine requiring faith, and it is not concerned with divine or supernatural forces.[10]

Addressing creationists' claim that evolution itself is a dogma or an assumption - not a theoretically and factually supported science - Siegel demonstrates that this too is false. A scientific theory must be testable and have explanatory and predictive power. An examination of evolution meets these standards. The facts of biology that evolutionary theory explains can be tested and updated as new information is acquired. The theory of evolution has the capability of explaining why the facts within the body of the theory are what they are and not something else. Finally, the theory of evolution has the power to predict novel facts based on nonbiological processes of change and development.[11]

When these same criteria are applied to the argument that creationism is a science, it certainly fails. There is no room in the view of creationism to test the origins of life in a laboratory, because no test result is permitted to be incompatible with its claims. Likewise, creationism lacks predictive power since, again, any test results conceived may not contradict creationist perspectives. Finally, creationism is totally lacking in explanatory power because it seeks to be compatible with everything. Being compatible with everything, it explains nothing. Siegel clarifies this by stating, "A theory that can explain all possible evidence explains nothing, since it cannot explain why something is not the case."[12]

In examining the charge that the state board was guilty of bias by emphasizing only evolution in the science curriculum, the creationists again lose, according to Siegel, since creationism and evolutionary theory are not scientific equals. The claims of evolutionary

indoctrination requires an examination of how evolution is taught. If students are prevented from critically examining the theory of evolution and supportive evidence, then the charge of indoctrination is correct. However, as Siegel indicates it is doubtful that evolution is always, or often, taught in this manner. Siegel summarizes his responses to the creationists' argument that teaching evolution violates students' rights to religious freedom by discussing what would constitute such a violation. One's religious freedom is certainly violated if he or she is not permitted to acknowledge his or her belief in speech or action. However, "a science course that rejects creationism as an answer to questions concerning the origins of life does not punish students."[13]

Although the court's ruling on this case "cleared" the State Board of the creationists' charges, it was a hollow victory for education since, as mentioned earlier, the court also ruled that evolution could not be taught as fact.

Additional examination of other judicial responses to the charge that exclusive instruction in evolutionary theory burdens free exercise of religion reveals firmer court positions. For example, in two cases, (Willoughby v. Stevens, 504 F. 2d 271 (D.C. Circ., 1974) and Wright v. Houston, 366 F.Supp. 1208 (S.D. Tex., 1972), judges determined "that exclusive instruction in the general theory (did) not yield coercion against religious exercise.'"[14] Also in Wright v. Houston (1972), the judge noted that other representatives of the many religions in this pluralistic country might wish their views on the origin of life be included in public school curriculum. Fortunately, he ruled that a requirement to teach every theory of human origin'" would be an unwarranted intrusion into the authority of public school systems to control the academic curriculum. "[15]

Regarding additional judicial response to potential violation of the First Amendment, a federal district judge in Washington, D.C., 1978, found it was "unlikely to the point of improbability that a court would find that a scientific treatment of evolution in science textbooks is, directly or indirectly, the advancement of an agnostic or atheistic belief. "[16]

Skoog notes that even when evolution is exclusively taught, neutralizing the curriculum with scientific creationism may not be a remedy. He supports this with an opinion of California Attorney General Evelle Younger who says even if inclusion of scientific theory in a textbook adoption situation did violate the First Amendment, "it would not follow that the duty of the Board of Education to remedy such an alleged coercive effect would be to include in public school textbooks a 'balancing'religious treatment of creation. " Judge William R. Overton in his court opinion on the Arkansas law stated that (assuming for the sake of argument) evolution was a religion or religious tenet, the solution would be to stop teaching evolution, not establish another religion in opposition to it.[18]

Beyond all of the above legislation, rulings, and arguments for and against, Judge Overton's ruling on the Arkansas law serves as the leading test case. He cited the Establishment Clause test from Lemon v. Kurtzman, 403 US 602 (1971) for examining McLean v. State of Arkansas (LR-C-81-322). The test states the following: "1) the statute must have a secular purpose; 2) its principle or primary effect must be one that neither advances nor inhibits religion; and 3) the statute must not foster excessive government entanglement with religion."[19] Failure to possess the characteristics would kill the legislative act.

Overton scrutinized the evidence for its secular legislative purpose. What he found was an interesting plan that would require students, via a balanced treatment of creation-science and evolutionary-science, to, in effect, choose between the literal interpretation of Genesis and the godless system of evolution. The absurdity of this conscious attempt is demonstrated in the writings of Henry M. Morris, a leading creationist, whom Overton quotes as saying, "'It is impossible to devise a legitimate means of harmonizing the Bible with evolution. "[20]

The drama began with Institute for Creation Research proponent Paul Ellwanger, a respiratory therapist trained in neither law or science, collected a number of proposed pieces of legislation and prepared a model for an act that would require balanced treatment of scientific creationism and evolution in the public schools. It was this model that served as a draft for the legislation written in Arkansas.

Ellwanger's letter to Paster Robert E. Hays, as cited in Overton's opinion, demonstrates that he, as a drafter of this legislation, did not believe creation-science is a science. He writes, "While neither evolution nor creation can quality as a scientific theory...we have used these terms -- the evolution theory and the theory of scientific creationism -- in the bill's text. "[21]

Additional Ellwanger correspondence shows that he knew he was religiously crusading and that he wanted that fact concealed. In a letter to a Louisiana legislator where a similar piece of legislation was passed he says, "'I view this whole battle as one between God and anti-God forces, though I know there are a large number of evolutionists who believe in God.... If you have a clear choice between having

grassroots leaders of this statewide bill promotion effort to be ministerial or non-ministerial, be sure to opt for the non-ministerial. It does the bill effort no good to have ministers out there in the public forum and the adversary will surely pick at this point. "[22]

Overton notes that possibly the most interesting evidence supporting Ellwanger's interest in his disposition testimony regarding his strategy for getting the model act implemented: "I believe that the predominance of population in America that represents the greatest potential for taking some kind of action in this area is a Christian community. I see the Jewish community as far less potential in taking action...but I've seen a lot of interest among Christians and I feel, why not exploit that to get the bill going if that's what it takes. " (Ellwanger Depo. at 144-147).[23] And finally in a letter to Mr. Tom Bethell, Ellwanger's ultimate plan is revealed: "Perhaps all of this is old hat to you, Tom, and if so, I'd appreciate your telling me so and perhaps where you've heard it before -- the idea of killing evolution instead of playing these debating games that we've been playing for nigh over a decade already. " (Unnumbered attachment to Ellwanger Depo at 3.)[24]

When the bill was introduced into the Arkansas Senate, it was done so by a self-described "born-again" Christian Fundamentalist, who did not consult any representative from the state department of education, scientists, science educators, or the Arkansas Attorney General. It was not referred to any committee for hearing and was passed on the Senate floor after a few minutes of discussion. In the House, Ellwanger's model act had a fifteen minute perfunctory hearing before a committee and it was passed with no changes other than typographical.

Overton was convinced by several circumstances that the intent of the Act was to advance religion. Citing the lack of any legislative investigation, "the unprecedented intrusion in school curriculum" Arkansas' historical opposition to evolution, and the Act's public proclamation that its purpose was strictly sectarian, Overton stated the Act "was simply and purely an effort to introduce the Biblical version of creation into the public school curricula."[25] The Act therefore failed the first prong of the Lemon v. Kurtzman test -- that of secular legislative purpose.

Overton then further examined the evidence that would demonstrate attempts to advance or inhibit religion by reviewing the Act's definition of creation-science (as quoted earlier in this paper on page 3). That section was not just similar to the literal interpretation of Genesis as claimed by the defendants, but rather it was "identical and parallel to no other story of creation."[26] In tackling the defendants' argument that "sudden creation...from nothing" does not involve a supernatural deity, Overton submitted that the concept of "creation out of nothing" is unique to Western religions, and because the conception of a creator is a conception of God, the claim is "the ultimate/religious statement" since God is the only actor.[27] Thus, the Act fails the second prong of the test.

As indicated earlier, a science must be testable and have explanatory and predictive powers. Overton writes that the creationists do not employ the scientific process of inquiry to substantiate their claims. Instead they take the book of Genesis and try to find scientific support for it. He quotes Morris' book, Studies in the

Bible and Science (page 114), to illustrate creationist method:

> "...it is...quite impossible to determine anything about Creation through a study of present processes, because present processes are not creative in character. If man wishes to know anything about Creation...his sole source of true information is that of divine revelation. God was there when it happened. We were not there...Therefore, we are completely limited to what God has seen fit to tell us, and this information is in His written Word. This is our textbook on the science of Creation. "[28]

Overton notes that the emphasis on the origins of life is peculiar to creationist literature, not evolutionary theory. Although the subject is within the province of biology, the 'scientific community does not consider origins of life part of evolutionary theory."[29] Evolution assumes the existence of life and is directed to an explanation of how life evolved. It "does not presuppose the absence of a creation or God..."[30]

Overton concludes, "While anybody is free to approach a scientific inquiry in any fashion they choose, they cannot properly dissolve the methodology used as scientific, if they start with a conclusion and refuse to change it regardless of the evidence developed during the course of the investigation."[31]

Overton also had a perspective regarding the academic implications for instruction if "balanced treatment" were required. He suggested that many teachers, in considering creation-science as academically unsound, will simply forego teaching subjects which might trigger the

required equal treatment.[32] The obvious consequences of omitting the teaching of evolution -- a cornerstone of biology -- would have a significant deprivation effect on the quality of post-secondary, especially in the health fields.

Finally Overton states excessive entanglement between religion and government is inevitable with this statute. He points out that state officials would be required to constantly monitor teaching materials to avoid religious reference and that teachers would be in an impossible situation. Overton asks, "How is a teacher to respond to questions about creation suddenly and out of nothing, to explain the occurrence of a worldwide flood, or to explain the concept of a relatively recent age of the earth? The answer is obvious because the only source for this information is ultimately contained in Genesis."[33]

The creationists sought to supplant evolution with creationism on the grounds that the teaching of evolution inhibited the free speech and religious practices of the believers of creationism and that it advanced religion, i.e., evolution. Nothing could be further from the truth. In fact, if laws mandating the teaching of creationism are not challenged and continue to be passed or upheld, those laws violate constitutional rights. It is imperative for the sake of religious freedom in this country that the separation between Church and State is maintained. As Supreme Court Justice William O. Douglas noted (Zorach v. Clausen, 343 U.S. 306, 314 (1951), there are cases where the preferences of an individual or a majority cannot prevail. "Our individual preferences...are not the constitutional standard. The

constitutional standard is the separation of Church and State. "[34] Finally, Skoog quotes Tocqueville, who said in 1835 that religion prospered in America because "it restricts itself to its own resources'" and that when religions seek to "'extend their power beyond spiritual matters they run the risk of not being believed at all. "[35]

FOOTNOTES

[1]Henry M. Morris and Martin E. Clark, The Bible Has the Answer, as cited in "Text of the U.S. District Court's Ruling on the Arkansas Creationism Case," Education Week, January 12, 1982, p. 13.

[2]Gerald Skoog, "Legal Issues Involved in Evolution VS. Creationism," Educational Leadership, November 1980, p. 154.

[3]Ibid.

[4]Ibid., p. 155.

[5]Ibid.

[6]William R. Overton, "Text of the U.S. District Court's Ruling on the Arkansas Creationism Case," Education Week, January 12, 1982, p. 14.

[7]Skoog, p. 155.

[8]McLean v. Arkansas Board of Education (D.C. Arkansas) No. LRC 81 322, January 5, 1982, Overton, District Judge.

[9]Harvey Siegel, "Creationism, Evolution: The California Fiasco," Phi Delta Kappa, October, 1981, p. 96.

[10]Ibid.

[11]Ibid., p. 97.

[12]Ibid., p. 99.

[13]Ibid., p. 100.

[14]Skoog, p. 155.

[15]Ibid., p. 156.

[16]Ibid., p. 155.

[17] Ibid.

[18] Overton, p. 16.

[19] Ibid., p. 12.

[20] Ibid., p. 13.

[21] Ibid.,

[22] Ibid.

[23] Ibid., p. 14.

[24] Ibid.

[25] Ibid.

[26] Ibid.

[27] Ibid.

[28] Ibid., p. 15.

[29] Ibid., p. 14.

[30] Ibid., p. 14.

[31] Ibid., p. 15.

[32] Ibid., p. 16.

[33] Ibid.

[34] Skoog, p. 156.

[35] Ibid.